

Exhibit C

Magic West

Cach v. Ingya

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE CITY OF SAN DIEGO

CACH, LLC,

Plaintiff,

vs.

Case No.: 37-2011-0070906-CL-CL-EC

JOE INGYA; DOES 1-10,

Defendant.

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Deposition of MAGIC WEST

March 27, 2012

San Diego, California

Reported by: Angie Schultz-Messenger, CSR No. 11742

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Cach v. Ingya

1 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
2 FOR THE CITY OF SAN DIEGO  
3  
4 CACH, LLC,  
5 Plaintiff,  
6 vs. Case No.: 37-2011-0070906-CL-CL-EC  
7 JOE INGYA; DOES 1-10,  
8 Defendant.  
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14 Deposition of MAGIC WEST, taken on behalf of
15 Defendant, commencing on Tuesday, March 27, 2012, at
16 10:00 a.m., taking place at 701 B Street, Suite 1115,
17 San Diego, California 92101, before Angie
18 Schultz-Messenger, Certified Shorthand Reporter,
19 Certificate number 11742.

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1 case to CACH, that gets forwarded to SquareTwo
2 Financial, and then they get the documents and kind of
3 goes back through the chain that I just described?

4 A. That's my understanding.

5 Q. Okay. But you're not -- as a records
6 custodian, it's not your job to get these documents
7 together?

8 A. No. I review the documents that we have,
9 and I rely on the work of others inside my company.

10 Q. Okay. So these documents that you produced
11 today, those are whose documents?

12 A. They're -- CACH would hold the title to the
13 accounts and the actual documents. They would be the
14 ones that held them. But it's through -- in a
15 computer system.

16 Q. Okay. This computer system -- I know today
17 in the electronic records day and age, these documents
18 are probably stored electronically, correct?

19 A. The majority of them, yes.

20 Q. Okay. Where were they stored
21 electronically.

22 A. They're at our Denver office.

23 Q. SquareTwo?

24 A. Yes.

25 Q. So SquareTwo has the electronic records?

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1 A. Yes. They hold them for CACH.

2 Q. Okay. So does CACH ever hold the documents?

3 A. Beyond my -- they're the ones that hold the
4 rights to the account, whether it's on servers at our
5 office, SquareTwo's Denver office.

6 Q. So the documents would be held on the server
7 at SquareTwo?

8 A. That's my understanding, of the ones that
9 are electronic.

10 Q. Okay. All right. We'll go through that a
11 little bit more later. Okay. What about -- well,
12 let's take a look at the document that will probably
13 get us there. Exhibit -- I guess it would be 3.

14 (Exhibit 3 was marked for identification.)

15 BY MR. SWIGART:

16 Q. Would be the complaint filed in this case.
17 Make sure I don't have anything else attached. There
18 you go. I have a copy for your, sir.

19 MR. CLARK: Thank you.

20 BY MR. SWIGART:

21 Q. So Exhibit 3 is a copy of the complaint that
22 was filed in this case, CACH versus my client, Joe
23 Ingya. Have you seen this document before?

24 A. Not the actual compliant, no, I haven't.
25 I'm aware that one was filed.

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1 Q. Gotcha. And the authorization that filed
2 it, the case, that came from CACH?

3 A. I'm not aware.

4 Q. You don't know if it came from SquareTwo
5 maybe?

6 MR. CLARK: Objection. Lack of personal
7 knowledge.

8 BY MR. SWIGART:

9 Q. Do you --

10 A. I couldn't tell you. I don't know.

11 Q. Okay. All right. All right. What about
12 the contents of the complaint, are you aware of what's
13 pled?

14 A. Yes.

15 Q. Okay. Have you reviewed it before your
16 deposition here today?

17 A. Yes, have.

18 Q. Do you know the factual basis for some of
19 the cause of action?

20 A. Yes, that we purchased an account, we're
21 trying to collect on it.

22 Q. All right. And again, when you say "we,"
23 who are you talking about SquareTwo, CACH, somebody
24 else?

25 A. For all intents and purposes of this

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1 deposition and this case, it will be CACH. CACH is
2 the company that filed suit against your client, so
3 it'll be CACH when I say "we."

4 Q. Okay. Unless you clarify that, referring to
5 **SquareTwo?**

6 A. Yes. I'll specifically say SquareTwo if I
7 mean SquareTwo. As far as anything in this case is
8 concerned, it will be CACH.

9 Q. Fair enough. That'll simplify some things.
10 All right. So this account originated with Bank of
11 America, I take it?

12 A. Yes.

13 Q. How did the account come into possession of
14 CACH?

15 A. It was charged off by Bank of America.
16 Charged off meaning bank washed their hands of it,
17 they put it up for sale to companies like mine. We
18 purchased it as part of a batch, and it became
19 something that we held the rights to.

20 Q. Okay. Does SquareTwo hold the rights to
21 this account?

22 A. CACH holds the rights.

23 Q. Okay. All right. So they purchased it from
24 Bank of America?

25 A. That is correct.

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1 Q. Okay. Not to split hairs, did they purchase
2 it from Bank of America or one of its subsidiaries or
3 holding companies?

4 A. It's purchased through their subsidiaries,
5 FIA Cards Services, which their primary goal or
6 primary function is to handle consumer lines of
7 credit.

8 Q. Okay. Fair enough. So the documents
9 supporting that purchase were produced in Exhibit
10 number 2?

11 A. Yes, that's correct.

12 Q. Okay. Did you get any other document aside
13 from what was produced in Exhibit number 2 from Bank
14 of America?

15 A. No. Everything that I've seen in our
16 computer system that we received from Bank of America
17 to date has been provided.

18 Q. Okay. Fair enough. Just looking at the
19 front of the complaint, really CACH is alleging two
20 cautions of action against my client, the first is
21 breach of contract. Do you see that?

22 A. Yes, I see that.

23 Q. Okay. What's the factual basis for the
24 breach of contract?

25 A. That there was an account that went into

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1 default by lack of payment and we're pursuing it.

2 Q. Okay. When you say "an account," who are
3 the parties of that account?

4 A. The original parties would have been Bank of
5 America and your client.

6 Q. Okay. And in this day and age, when you say
7 "Bank of America," you realize that there's different
8 subsidiaries to Bank of America, correct?

9 A. Yes. As with many banks, there's tens if
10 not 20 different subsidiaries with banks.

11 Q. Fair enough.

12 A. It all falls under the same umbrella.

13 Q. When we're dealing go breach of contract to
14 get some specificity, do you know who the parties of
15 that contract were?

16 A. The best of your knowledge is Bank of
17 America and the defendant.

18 Q. Bank of America, N.A.?

19 A. Sure.

20 Q. I mean, it says it in the complaint.

21 A. Yes. Whether it's Bank of America, N.A. or
22 under some other name, to me, for simplification, is
23 Bank of America.

24 Q. The holding company?

25 A. As far as how they have their business set

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1 up or which arm sold to it to -- transferred it to FIA
2 Card Services that sold it to us, that's not what I'm
3 aware of.

4 Q. Okay. Let me ask the question this way.
5 You down know if the contract between Mr. Ingya and --
6 was made with FIA Card Services, do you?

7 A. What do you mean -- what's your definition
8 of "contract"?

9 Q. Well, let's back up. You sued for breach of
10 contract, right?

11 A. Correct.

12 Q. What did you mean by "breach of contract"
13 when you put it in the complaint?

14 A. No. I'm asking a clarifying question of
15 whether you mean a signed application, card member
16 agreement, use of the card? There's many things with
17 a credit card that can establish a contract. I wanted
18 to know which you're referring to.

19 Q. Fair enough. Let me clarify a little bit.
20 The basis that serves for the formation of the
21 contract that you sued on, do you know what that is?

22 A. As far as my understanding of how this
23 account was established was through use of the card.
24 There was an account, there was a line of credit
25 issued by Bank of America to the defendant, he got

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1 goods and services for that card, paid for a period of
2 time, ultimately failed to keep up with his payments,
3 the card went into default, which would have been a
4 breach of contact, as far as my layman's
5 understanding, because I'm not an attorney.

6 And then again, it went into a charge-off status
7 and was sold off so that Bank of America could get
8 some sort of payment for the account, but they washed
9 their hands of it.

10 Q. Sure. And I appreciate that clarification.
11 I'm not asking you to make any type of legal
12 conclusion or legal basis for what we're talking
13 about. We're talking about the factual basis of these
14 causes of action. When you say that there was this
15 line of credit extended, do you have any basis for the
16 facts that gave rise to that extension?

17 A. The statements that we received shows that
18 there was an account that was established.

19 Q. Do you have any knowledge as to how that
20 account was established?

21 A. Whether it was a signed application, an
22 application online or over the phone, that I'm not
23 aware of.

24 Q. You don't know?

25 A. I don't know.

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1 Q. Okay. What about the date that that
2 contract was formed, do you have any knowledge of
3 that?

4 A. The open date that was supplied to us was in
5 2005. Yeah, it was 6/9 of 2005 is what my notes
6 indicate.

7 Q. Okay. And how is that information supplied
8 to you?

9 A. As part of our purchase from Bank of America
10 they give us all the information regarding an
11 individual account that they have, such as an
12 individual's name, social security number, any account
13 numbers that were held through the life of the
14 account, address that they have, phone numbers that
15 are applicable, open dates, charge-off dates, that
16 sort of information.

17 Q. Fair enough. So the information that you
18 originally gained from Bank of America had that
19 information that you just described?

20 A. Yes. That was part of our initial purchase
21 that was provided to us in electronic file.

22 Q. But how the contract was formed, be it a
23 written contract, over the phone, on the internet,
24 that wasn't provided to you?

25 A. Well, the request for the line of credit

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1 REPORTER'S CERTIFICATION

2
3 I, Angie Messenger, a certified shorthand
4 reporter, in and for the State of California,
5 Certificate No. 11742, do hereby certify:

6
7 That the foregoing proceedings were reported
8 by me stenographically and later transcribed into
9 typewriting under my direction; that the foregoing is
10 a true record of the proceedings taken at that time.

11
12 IN WITNESS WHEREOF, I have subscribed my
13 name this 8th day of April, 2012.

14
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16
17 Angie Messenger, CSR No. 11742

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